Procrastinators’ Programs SM

Ethics: The Unauthorized Practice of Law

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1 Hour of Ethics CLE
December 23, 2014
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ETHICS: UNAUTHORIZED PRACTICE OF LAW

NEW ORLEANS BAR ASSOCIATION

PROCRASTINATOR’S PROGRAM

DECEMBER 23, 2014

Presented by:

John E. McAuliffe, Jr.
Frederick A. Miller & Associates
Metairie, LA
ETHICS: UNAUTHORIZED PRACTICE OF LAW

I. Why Should Attorneys Care About UPL
   A. Protect the Consumer/Client
   B. Protect Your Turf/Your Income
   C. Protect the Reputation of Lawyers

II. Types of UPL
   A. UPL by a Lawyer or Suspended/Disbarred Lawyer
   B. UPL by a Non-Lawyer

III. Rules of Professional Conduct
   A. Rule 5.5(a) – UPL by an attorney

   In re: Calahan, 55 So. 3rd 782 (La. 2011)

   In 2006, Calahan was disbarred for various infractions. In 2007, he was arrested for practicing law after his disbarment and he eventually pled guilty to eight counts of the unlawful practice of law. The ODC filed formal charges against the respondent for engaging in the unauthorized practice of law. The LSC found that he had engaged in UPL and determined that the “baseline sanction for this type of misconduct is disbarment”.

   In re: Melton, 848 So.2nd 519 (La. 2003)

   Melton was found first to be ineligible for the practice of law because he failed to comply with the continuing education requirements. Then, he was found ineligible to practice for failing to pay his bar dues. During the time of his ineligibility, Melton appeared twice in open court in connection with a criminal matter in Orleans Parish. The LSC found him guilty of UPL and imposed a suspension of three years. Melton’s claim that he intended “to appear only as a friend” of the criminal defendant was not accepted.
In re: Petal, 30 So.3rd 728 (La. 2010)

Petal was suspended from practice because he failed to comply with the minimum continuing legal education requirements and for other transgressions. During the time of his suspension, he appeared in Civil District Court on two occasions on behalf of himself and a Limited Liability Company. Petal claimed he was not practicing law but was acting in proper person on behalf of an LLC as permitted in LSA-R.S. 37:212. The LSC determined that the record of the civil proceeding indicated that he was “appearing for the plaintiffs” as an attorney. There was no evidence in the record that he was acting as a duly authorized representative of the LLC. His penalty was permanent disbarment.

See Also: In re: Hammond, 2011 W.L. 150201 (La. 2011); In re: Hernandez, 46 So.3rd 1244 (La. 2010)

State v. Jefferson, 660 So. 2nd 917 (La. Court of Appeal 4 Cir. 1995)

Jefferson’s license to practice law was suspended by the Louisiana Supreme Court. Thereafter, Jefferson practiced law during the time of his suspension and he was charged with the unauthorized practice of law in violation of LSA-R.S. 37:213. Although the issue in this reported case involves double jeopardy, the Court of Appeal allowed the criminal matter to move forward.

B. Rule 5.5(a) – Assisting in UPL

In re: Garrett, 12 So.3rd 332 (La. 2009)

The attorney was found to have facilitated the unauthorized practice of law and suffered disbarment. Garrett had hired Jordan in 1996. Jordan had passed the bar exam but had yet to be admitted to practice. (She was later denied admission for issues involving moral character.) Garrett allowed Jordan to negotiate personal injury settlements and also represented clients while recorded statements were being taken by insurance adjusters. The Court stated that the baseline sanction for “facilitation of the unauthorized practice of law by a non-lawyer is disbarment”. (In an interesting sidelight, Ms. Jordan had filed a third application for admission. In a separate opinion issued on the same date as In re: Garrett, the LSC denied her admission as a result of her
fee-sharing arrangement with Garrett and because of her unauthorized practice of law.)

In re: Guirard and Pittenger, 11 So. 3rd 1017 (La. 2009)

The two named respondents who were partners in a law practice were found to have assisted others in the unauthorized practice of law. Both attorneys were disbarred. The attorneys had employed five “case managers”, all of whom were non-lawyers. The managers were allowed to give legal advice to clients and negotiate settlements with adjusters after the attorneys had given the managers discretion for compromise within a “high-low range”. Additionally, investigators retained by the firm advised clients with respect to the execution of legal documents, medical releases, employment releases and potential conflicts of interest.

In re: Sledge, 859 So. 2d 671 (La. 2003)

Sledge was a solo practitioner who employed law clerks or receptionists and two other non-lawyers designated as an office manager/litigation supervisor and a legal assistant. Petitions and pleadings were drafted by non-lawyers and, at times, his staff signed Sledge's name with a rubber stamp or even with a pen. Sledge did not normally review these pleadings or correspondence. Sledge’s legal assistant would oversee medical treatment, correspond with adjusters and prepare demand letters based on certain guidelines which the staff used in all cases. The office manager/litigation supervisor would then negotiate directly with adjusters for insurance companies. Sledge did not supervise any of these activities. The LSC determined that Sledge had assisted others in the unauthorized practice of law. His penalty was disbarment. (Justice Knoll concurred saying that Sledge’s conduct was “one of the most egregious examples of outrageous conduct” ever witnessed. Justice Knoll thought that permanent disbarment was in order. Justice Weimer – joined by Justice Calogero – dissented saying that a lengthy suspension rather than disbarment would be in order.)

C. Rule 5.5(e) – Employment of a Disbarred or Suspended Attorney

Rule 5.5(e)(1)

“A lawyer shall not:
(i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or

(ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.”

(1) Employment Registration Statement – Exhibit A

(2) Notice of Termination of Employment – Exhibit B

(3) Rule 5.5(e)(3) provides a list of specific activities that constitute the practice of law with respect to a suspended or disbarred attorney. The suspended or disbarred attorney may not hold one’s self out as an attorney, provide legal consultation or advice to a client, appear in a court or any other proceeding on behalf of a client, appear as a representative of a client at a deposition or any other discovery matter or negotiate or transact any matter for a client. Additionally, this portion of the rule provides a “catchall” which states that the practice of law includes any activities defined by law or a Supreme Court decision as such.
(4) Rule 5.5(e)(4) also prohibits a suspended lawyer or a lawyer transferred to disability inactive status from receiving or otherwise handling funds of a client.

In re: Hammond, supra

D. Rule 5.4 – “A Lawyer or Law Firm shall not Share Legal Fees with a Non-Lawyer…”

In re: Garrett, supra

“Respondent has also committed misconduct by sharing his legal fees with Ms. Jordan. Ms. Jordan and respondent describe her compensation arrangement as “complex” and “convoluted”, but we find it simple: under their agreement, respondent and Ms. Jordan share a predetermined percentage of his legal fees as compensation for her work on the “J files”. Such an arrangement clearly violates the letter and spirit of Rule 5.4(a) of the Rules of Professional Conduct, which provides that a lawyer ‘shall not share legal fees with a nonlawyer’ except under limited circumstances not relevant to this case. Furthermore, respondent admitted that he engaged in impermissible fee sharing with Ms. Jordan for a period of at least five years.”

In re: Guirard, supra

In addition to assisting in the unauthorized practice of law by non-lawyers, Guirard was also found to have violated Rule 5.4(a) by sharing legal fees with a non-lawyer. Guirard’s case managers were paid commissions and bonuses based on the “gross attorney’s fees generated on any particular file”. The evidence also showed that the firm’s office manager and a secretary were paid commissions based on the firm’s “gross legal fees collected on various cases”.

E. Rule 5.3 – Staff Supervision

In re: Mopsik, 902 So.2nd 991 (La. 2005)
An attorney’s paralegal was allowed to meet with clients, send letters to other attorneys and perform other tasks in handling cases. While the attorney was out of town, the paralegal appeared in Civil District Court telling the judge that she “worked with respondent”, discussed issues with the judge and presented pleadings to the judge for signature. The Court determined that the attorney violated Rule 5.3 in failing to properly supervise his staff. He was suspended from practice for sixty days.

F. Multiple Counts

Hammond, supra – 24 counts

IV. Statutory Scheme – LSA-R.S. 37:212 and 37:213

The “practice of law” is defined in LSA-R.S. 37:212. LSA-R.S. 37:213 imposes criminal penalties for the practice of law by a non-lawyer. The practice of law by a non-attorney may result in a fine of not more than $1,000.00 or imprisonment for not more than two years or both.

A. Will They Prosecute?

State v. Rosborough, 152 La. 945, 94 So. 858 (La. 1922)

Defendant held himself out as being entitled to practice law and was convicted in Criminal District Court in Orleans Parish. In this appeal, the defendant claimed the statute was unconstitutional. Defendant's conviction was affirmed. (Not surprisingly, Mr. Rosborough was representing himself.)

State v. Weysham, 410 So.2d 1104 (La. 1982)

Weysham was convicted on two counts relating to the unauthorized practice of law pursuant to LSA-R.S. 37:213. The matter before the Supreme Court was related to revocation of his probation in a subsequent proceeding.

State v. Kaltenbach, 587 So.2d 779 (La. App. 3 Cir. 1991)

Kaltenbach was the local leader of a group entitled “Enlightened Patriots' Association” (EPA). This organization advocated that citizens of the United States should learn and use the common law and the Constitution
of the United States. EPA did not approve of licensed attorneys or organized Bar Associations. EPA believed “that attorneys represent clients rather than justice”. Kaltenbach was involved in an EPA law course on pro sé litigation. The course was taught through videotape sessions. Students in the course also were provided materials and Kaltenbach assisted any attendee who may have had problems or questions. One of the students was Mr. Milliman. Milliman was involved in two civil lawsuits and a criminal proceeding. He represented himself in the two civil matters and the EPA group assisted him in suggesting certain pleadings that should be filed and the sequencing of pleadings. Milliman used form pleadings from his course materials. Milliman also “donated” over $5,000.00 to EPA. Milliman insisted that it was a donation and not a payment for services. The appellate court reversed defendant’s conviction of a violation of LSA-R.S. 37:213. The Court stated that the prosecutors had not demonstrated that the defendant represented others or that the defendant received any compensation for advice or assistance given to Milliman. The mere fact that the defendant assisted others and through EPA-sponsored courses did not constitute the practice of law. Judge Knoll dissented, saying that the $5,000.00 “donation” was, in fact, a payment for services rendered. (Of course, Mr. Kaltenbach represented himself.)

State v. Gibson, 867 So.2nd 793 (La. App. 4 Cir. 2004)

Defendant was convicted of theft of more than $5,000.00 pursuant to LSA-R.S. 14:167. He was also convicted of practicing law without a license pursuant to LSA-R.S. 37:213. The issue on appeal was whether prosecution of the defendant for both crimes amounted to double jeopardy. The Court found that the double prosecution did violate the double jeopardy rule. His theft conviction was reversed and the conviction of the unauthorized practice of law was imposed.

State v. Jefferson, supra

State v. Ellison, Criminal Dist. Court 490-852

B. Civil Cases

Duncan v. Gordon, 476 So.2d 896 (La. App. 2 Cir. 1985)
Duncan was injured in a motor vehicle accident. Gordon, a friend, advised plaintiff to go to a doctor to determine if he was injured. Later, plaintiff agreed that Duncan would represent him in order to obtain a settlement. Plaintiff signed a 50% contingency fee contract in favor of defendant. The case settled for $3,000.00 and plaintiff then sued Gordon, claiming that the 50% contingency contract was illegal because defendant had engaged in the unauthorized practice of law. In holding that the contract was unenforceable, the Court stated the following:

"The trial court, in its reasons for judgment, stated that the purpose of LSA-R.S. 37:213 was to prevent persons who are not lawyers from holding themselves out to the public as lawyers. While this statement by the trial court is correct, there is another equally important evil the statute was designed to prevent. That evil is to prevent laymen from rendering services to the public which only lawyers are qualified to render. It is only by preventing such conduct that the general public will be protected from laymen dabbling into areas in which they are incompetent. Thus, the fact that at no time did defendant ever hold herself out to be a lawyer does not mean that she did not engage in the unauthorized practice of law. The defendant rendered services which she was not competent to give, one of the evils the statute was designed to prevent. Therefore, this statute is applicable to the defendant's conduct."

Antee v. Oupac, Inc., 2009 W.L. 1220764 (La. App. 3 Cir. 2009)

An employee (non-lawyer) of Oupac, Inc. filed a suit in Opelousas City Court to recover on an unpaid note. The Antees made no appearance and a judgment was taken against them. In a subsequent action, the Antees attempted to annul that judgment. The Antees claimed that the original Petition was improperly filed and that the employee was guilty of the unauthorized practice of law. The Court held that under LSA-R.S. 37:212, a corporation may file a suit without an attorney if the amount in dispute is less than $5,000.00.

Bankston v. Tasch, LLC, 40 So.3rd 495 (La. App. 4 Cir. 2010)

Plaintiffs filed suit against Tasch, LLC in connection with the renovation of a boathouse. An Answer was filed on behalf of Tasch by Jack Allen with
the designation “representing self”. Allen also filed a Reconventional Demand on behalf of Tasch. Plaintiffs filed a Motion to Disqualify Allen as the “attorney” for the LLC. The Court held that LSA-R.S. 37:212(C) was not applicable since the matter had not been filed in a court of limited jurisdiction and since the amount in controversy was over $72,000.00. Even if Tasch were the sole member of the LLC, the LLC was a separate entity from Mr. Allen himself. The Court found that Allen was not an attorney and, therefore, he could not represent Tasch, LLC.

Williamson v. Berger, 908 So.2nd 35 (La. App. 3 Cir. 2005), writ denied, 930 So.2d 5 (La. 2006)

During the course of this litigation, Ms. Williamson’s attorney died. She then began to represent herself. She then signed a power of attorney in favor of her husband, Robert Williamson, which gave him the authority to proceed with litigation. Mr. Williamson was not an attorney. Eventually the defendants moved for dismissal on the grounds of abandonment. Plaintiff claimed that discovery had been sent to defendants under the signature of Mr. Williamson and that this discovery interrupted the abandonment period. The Court held that since Mr. Williamson was not an attorney, he “had no standing” to propound any discovery. Thus, the Interrogatories were ineffective and the three year abandonment period was not interrupted.

First Bank & Trust v. Proctor's Cove II, LLC, No. 13-CA-802 (La. App. 5 Cir. 9/24/14)

Proctor’s Cove signed a Promissory Note with First Bank. Two individuals guaranteed the indebtedness. Eventually, First Bank sued Proctor’s Cove and the guarantors for the balance on the note. During the course of the litigation, Keith Gagnon (a non-lawyer member of Proctor’s Cove) filed pleadings on behalf of Proctor’s Cove. First Bank filed a Motion to Prohibit Preparation of Filing of Pleadings by a Non-Attorney. The Court granted the Motion observing that Gagnon was in violation of LSA-R.S. 37:213. An attachment was issued for the arrest of Mr. Gagnon. On appeal, the Fifth Circuit affirmed the trial judge’s decision to strike the pleadings filed by Gagnon. He was engaged in the unauthorized practice of law. In a concurring opinion, Judge Wicker agreed that the actions of Gagnon amounted to the unauthorized practice of law. However, she criticized subsection C of LSA-R.S. 37:212 because it was “poorly written, causes confusion, and is subject to different interpretations”. Specifically, she was
concerned with the language in the statute which allowed a partnership, corporation or other entity to assert or defend “any claim, not exceeding $5,000” through an authorized partner, officer or representative. Her criticism involved whether the “$5,000” limitation applied to the assertion of a claim only or whether it also applied to defending a claim on behalf of an entity. In a second concurring opinion, Judge Chaisson was of the opinion that the attachment on Gagnon had been improvidently issued because of the odd wording in the statute and because of the procedural history of the case.

V. NOTARY PUBLIC

A. Non-Attorney Notary

In re: Broussard, 900 So.2nd 814 (La. 2005)

A Justice of the Peace (non-lawyer) prepared and filed pleadings in civil divorce cases. The Judiciary Commission and the Louisiana Supreme Court determined that Broussard had engaged in the unauthorized practice of law. He was subjected to a public reprimand.

In re: Crawford, 943 So.2nd 331 (La. 2006)

A Justice of the Peace (non-lawyer) prepared divorce pleadings and charged fees for those services. The Judiciary Commission and the Louisiana Supreme Court determined that Crawford had engaged in the unauthorized practice of law. Crawford was subjected to a public censure.


A notary used her Notary Public number as a Bar I.D. number and gained access to the electronic filing system of the Bankruptcy Court. She then filed several Petitions for Bankruptcy and other pleadings on behalf of clients. The notary was sanctioned with a fine of $8500.00, ordered to return all fees and was permanently enjoined from engaging in any such activity in the future.

B. Attorney – Notary

(1) LSA-R.S. 35:14
This statute prohibits a “disbarred or suspended” attorney from exercising “any functions as a Notary Public”.

(2) Case Law

In re: Dowell, 24 So.3rd 203 (La. 2009)

A disbarred attorney notarized a Living Will. The attorney was found to have violated the statute and was suspended for one year.

In re: Ellis, 742 So.2nd 869 (La. 1999)

A suspended attorney drafted two Acts of Sale and collected a fee for this work. For violating the statute, the attorney was suspended for ninety days.

In re: Rudman, 791 So.2nd 1280 (La. 2001)

A suspended attorney acted as a Notary during his suspension. The attorney claimed he was not aware of the prohibition included in LSA-R.S. 35:14. The attorney was suspended for one year and one day with all but ninety days of that suspension deferred.

In re: Dowell, 14-B-2038 (La. 11/21/2014)

During the above suspension Dowell notarized a marriage contract, five affidavits to release liens and a power of attorney. The LSC imposed permanent disbarment.

VI. UPL and LSBA Actions

Meunier v. Bernich, 170 So.2nd 675 (La. App. Orl. 1936)

A minor was killed by a dynamite torch in 1932. Meunier, a claim adjuster, approached Mr. and Mrs. Bernich (parents) to investigate and settle the claim. The Berniches signed a contract with Meunier to act as their agent. The contract provided Meunier with a 1/3 interest in the claim. The contingency fee dropped to 25% if an attorney was retained. The defendant offered to settle for $150.00, and the plaintiffs refused. The matter was then placed in the hands of an attorney. Judgment was
rendered in the amount of $7500.00. The Berniches then settled for $4,000.00. The attorney received his 25%. Meunier sued the Berniches claiming he was owed 25% of the settlement amount.

- The Court determined that the activities of Meunier did constitute the practice of law. Meunier’s contract allowed him “to enforce, secure, settle, adjust or compromise” the claim. He advised the plaintiffs regarding liability issues.

- The Court declared a portion of Act 202 of 1932 unconstitutional. The act defined the practice of law but excepted from that definition certain activities as long as those activities were not undertaken within the confines of a court case.

- Under the Louisiana Constitution, the Louisiana Supreme Court is expressly given the power to regulate the practice of law. The legislature impinged on the power of the Louisiana Supreme Court in enacting that exception to the definition.


Sobol was an attorney admitted to practice law in the State of New York and the District of Columbia. He was not admitted to practice in Louisiana. Sobol became a staff attorney for the Lawyers Constitutional Defense Committee. The LCDC was a non-profit organization established to provide lawyers to handle civil rights litigation. Duncan, an Afro American resident of Plaquemines Parish, was arrested and charged with cruelty to juveniles. This incident arose out of a confrontation wherein a group of white teenage boys surrounded two of his young relatives after they had attended their first day of school at a formerly all-white school in the Parish. Sobol, in association with a Louisiana lawyer, undertook representation of Duncan. That matter went to trial and post trial motions and a writ application were filed. During the course of these proceedings, neither the district attorney nor the presiding judge made any mention of a problem with Sobol’s activities as a non-admitted lawyer. Sobol called the judge to set up an appointment to discuss Duncan’s bond with respect to additional post trial maneuvers. The meeting was scheduled and, in the meantime, the judge spoke with the district attorney who then had the presiding judge sign a bill of information charging Sobol with the unauthorized practice of law. As Sobol left the meeting, he was arrested. Suit was filed on behalf of Sobol and Duncan in Federal Court seeking to enjoin the prosecution of Sobol on various grounds. The LSBA intervened, taking the position that under LSA-R.S.
37:214, Sobol was a visiting attorney who was “temporarily present in this State” and acting “in association with a Louisiana lawyer”. The district court agreed with the LSBA’s position.

Williams v. City of New Orleans, 815 So.2nd 311 (La. App. 4 Cir. 2002)

Williams filed a FELA claim against the New Orleans Public Belt Railroad. He was represented by a Texas attorney who was not admitted in Louisiana. The Texas attorney associated a Louisiana attorney with respect to the representation. The defendant moved to disqualify the Texas attorney on various grounds including the fact that he had been extensively involved in more than twenty personal injury cases in the Parish of Orleans in the prior three years. The LSBA intervened. The Court held that the Texas attorney should not be disqualified under LSA-R.S. 37:214. The Court held that the attorney satisfied the “temporarily present requirement of the statute” and further that the statute did not “establish a numerical limitation” with respect to representation in this State.

Now See: Supreme Court Rule XVII, Section 13

Finova Capital Corp. v. Short’s Pharmacy, Inc., 898 So.2nd 1275 (La. 2005)

A North Carolina attorney sought pro hac vice admission in Louisiana. The application for pro hac vice admission required the attorney to divulge the number of times he had obtained pro hac vice admission in this State in the previous two years. The attorney had gained such admission on 24 other occasions. Pursuant to Supreme Court Rule XVII, the Office of Disciplinary Counsel opposed the attorney’s request for admission on the grounds that his frequent appearances in Louisiana constituted “regular practice in this State”. The Court of Appeal allowed the admission. The Louisiana Supreme Court reversed that appellate decision. The LCS stated the following:

“Taken as a whole, Mr. Saintsing’s numerous appearances in Louisiana over the last two years are indicative of a continuing practice in this State which has gone well beyond an occasional admission.”

LCAB styled themselves as “third party adjusters”. LCAB would have its clients sign an “Act of Mandate” which provided for a contingency fee. LCAB would investigate the claim, send clients for medical treatment, send letters of representation, send demand letters, gather medical records and conduct research to determine the value of a claim. LCAB attempted to handle several claims against State Farm. State Farm refused to discuss the claims with LCAB and advised LCAB clients that LCAB was engaged in the unauthorized practice of law. LCAB then filed suit against State Farm for defamation and the intentional interference with a business relationship. State Farm filed a Motion for Summary Judgment which was granted. State Farm claimed that truth is always defense to defamation. The Court determined that LCAB was, in fact, engaged in the unauthorized practice of law and, as a result, there was no defamation. Additionally, the Court determined that the contract between LCAB and its clients was null and void. As a result, there could be no interference with any such relationship.


The Public Access & Consumer Protection Committee of the Louisiana State Bar Association is charged with the responsibility of investigating complaints of the unauthorized practice of law in the State of Louisiana. For some years prior to Katrina, the Committee had received various complaints about individuals, including public adjusters, who were supposedly engaged in the unauthorized practice of law. Earl T. Carr and his firm, Carr and Associates, Inc., had been the subject of such complaints prior to Hurricane Katrina. On a number of occasions, the Committee had investigated claims against Mr. Carr and had written cease and desist letters to him. These complaints continued after Hurricane Katrina. The Committee reported these continued infractions to the Board of Governors of the Louisiana State Bar Association. The Board then authorized suit to be filed against Mr. Carr and his firm. On September 5, 2006, the Louisiana State Bar Association filed a Petition for Declaratory Judgment and Injunction against Carr and Associates, Inc. and Earl T. Carr, Jr.

After a multi-day trial in St. Tammany Parish, the district court, Judge William J. Burris presiding, found that Carr and his company were engaged in the unauthorized practice of law and issued a preliminary injunction against him. Subsequently and after certain stipulations were made by the parties, a permanent injunction was issued against Carr. Specifically, the permanent injunction prohibited Carr from entering into contingency fee contracts, from
providing advice on the terms of insurance policies and a client’s rights with respect to coverages and liabilities, from advising clients concerning the redress of legal wrongs, from advising clients as to secular law, from negotiating with an insurance company regarding legal aspects of a policy and/or a claim, from negotiating with insurers over the monetary value of a client's claim and from directing insurance companies to send checks directly to Carr and/or from directing insurers to make checks payable in a fashion which violates the Public Adjusters Act.

1. The First Circuit affirmed that the LSBA had standing to file suit against Carr for the unauthorized practice of law.

2. In all respects, the appellate court affirmed the district court’s injunction against Carr. The Court stated the following:

   “With these precepts in mind, we find that the record provides a reasonable basis for the trial court’s determination that Carr, and Mr. Carr, individually, engaged in the unauthorized practice of law while conducting the business of public adjusting. The record supports a finding that pursuant to a contingency and/or percentage-based fee arrangement, Mr. Carr individually advised clients of issues and rights concerning the redress of legal wrongs under their insurance policies, negotiated settlements and directly contacted insurers to discuss and evaluate the merits of his clients’ insurance claims. Mr. Carr admits that he engaged in all of these activities without a law license. He therefore engaged in the unauthorized practice of law.”

VII. UNAUTHORIZED PRACTICE OF LAW

The mission of the UPL Committee shall be to protect the public from incompetent or fraudulent activities by those who are unauthorized to practice law or who are otherwise misleading those in need of legal services.
A. UPL by attorneys

The Public Access and Consumer Protection Committee has no jurisdiction with respect to allegations of the unauthorized practice of law by an attorney, disbarred attorney and/or suspended attorney. Any such complaint should be handled by the Office of Disciplinary Counsel.

B. UPL by non-attorneys

(1) Complaint to the LSBA or the Committee
(2) Investigation
(3) Cease and desist letter
(4) Legal action
   (a) Civil
   (b) Criminal

C. Types of Individuals

(1) Paralegals
(2) Public Adjusters
(3) Bail Bondsmen
(4) Land Men
(5) Notary Public
BIOGRAPHY

John E. McAuliffe, Jr. is with Frederick A. Miller and Associates where he practices in the field of insurance defense. He received his undergraduate degree from the University of New Orleans and his law degree from Loyola University. He is a member of the Louisiana State Bar, the Louisiana Association of Defense Counsel, New Orleans Association of Defense Counsel (Past President) and the New Orleans Bar Association. He is admitted to practice in the Supreme Court of the United States, the U.S. Fifth Circuit Court of Appeals and the Eastern, Western and Middle U.S. District Courts. He is currently Chair of the Unauthorized Practice of Law Committee. He is also a member of the Board of Governors of the LSBA. In 2012 he received the LSBA's President's Award.
RULE 5.5e EMPLOYMENT REGISTRATION STATEMENT

(Pursuant to Rule 5.5e of the Louisiana Rules of Professional Conduct, a lawyer shall not employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, any person the attorney knows or reasonably should know is a suspended attorney or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer unless first preceded by the submission of a fully executed Employment Registration Statement to the Office of Disciplinary Counsel.)

1. Information on the Suspended/Disabled Attorney Sought to be Hired:

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<th>Name:</th>
<th>Bar roll number</th>
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2. Information on Attorney Having Direct Supervisory Responsibility:

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<th>Bar roll number</th>
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<td>Address:</td>
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3. Duties and Activities to be Assigned to the Suspended/Disabled Attorney Throughout the Duration of the Employment Affiliation:


4. Terms of Employment Including Method of Compensation:

<table>
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<tr>
<th>Terms of Employment:</th>
<th>(Will suspended/disabled attorney be an employee, independent contractor, other, etc; full time or part time; hourly or salary; etc.)</th>
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<tbody>
<tr>
<td>Compensation:</td>
<td>(What is the method and amount of compensation to be paid to the suspended/disabled attorney?)</td>
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</table>

The undersigned is the attorney having direct supervisory responsibility over the suspended/disabled attorney identified in this Employment Registration Statement. I certify that I have read fully the order of the Louisiana Supreme Court suspending the proposed employee from the practice of law and have given it appropriate consideration in advance of offering employment to the suspended attorney. I agree and consent to random compliance audits to be conducted by the Office of Disciplinary Counsel at any time during the employment or association of the suspended attorney. I certify that upon termination of the employment relationship with the suspended/disabled attorney, I will promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

Name of Supervising Attorney (Print or type)

Signature of Supervising Attorney

Bar Roll # of Supervising Attorney

Date
RULE 5.5e NOTICE OF TERMINATION OF EMPLOYMENT

Pursuant to Rule 5.5e of the Louisiana Rules of Professional Conduct, the undersigned Supervising Attorney hereby notifies the Office of Disciplinary Counsel that effective the _____ day of __________, 20___ the employment of __________________ Suspended/Disabled Attorney) has been terminated.

______________________________
Name of Supervising Attorney (Print or type)

______________________________
Signature of Supervising Attorney

______________________________
Bar Roll # of Supervising Attorney

______________________________
Date